

ASPIRA Delaware
Grievance Procedures for Complaints of Sex Discrimination (§ 106.45)

ASPIRA Delaware has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Complaints:

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that ASPIRA investigate and make a determination about alleged discrimination under Title IX:

- A “complainant,” which includes:
 - a student or employee of ASPIRA who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
 - a person other than a student or employee of ASPIRA who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in ASPIRA’s education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- ASPIRA’s Title IX Coordinator.⁶

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee of ASPIRA; or
- Any person other than a student or employee who was participating or attempting to participate in ASPIRA’s education program or activity at the time of the alleged sex discrimination.

ASPIRA may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.⁷ When more than one complainant or more than one respondent is involved,

references below to a party, complainant, or respondent include the plural, as applicable.

Basic Requirements of Title IX Grievance Procedures:

ASPIRA will treat complainants and respondents equitably.

ASPIRA requires that any Title IX Coordinator, investigator, or decision maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decision maker may be the same person as the Title IX Coordinator or investigator.

ASPIRA presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

ASPIRA has established the following timeframes for the major stages of the grievance procedures: Fifteen school days for major stages, including for example, evaluation (*i.e.*, the decision whether to dismiss or investigate a complaint); investigation; determination; and appeal, if any].

ASPIRA has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay. Extension of timeframes will be determined as needed and on a case-by-case basis.

ASPIRA will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

ASPIRA will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by ASPIRA to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with

the provision of treatment to the party or witness, unless ASPIRA obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and

- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Notice of Allegations:

Upon initiation of ASPIRA's Title IX grievance procedures, ASPIRA will notify the parties of the following:

- ASPIRA's Title IX grievance procedures and any informal resolution process;⁸
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. [If ASPIRA provides a description of the evidence: The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.]

If, in the course of an investigation, ASPIRA decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, ASPIRA will notify the parties of the additional allegations.

Dismissal of a Complaint:

ASPIRA may dismiss a complaint of sex discrimination if:

- ASPIRA is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in ASPIRA's education program or activity and is not employed by ASPIRA Delaware;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and ASPIRA determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or

- ASPIRA determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, ASPIRA will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, ASPIRA will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then ASPIRA will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

ASPIRA will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then ASPIRA will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, ASPIRA will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decision maker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decision maker for the appeal has been trained consistent with the Title IX regulations;⁹
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result

When a complaint is dismissed, ASPIRA will, at a minimum:

- Offer supportive measures to the complainant as appropriate;¹⁰
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within ASPIRA's education program or activity.¹¹

Investigation:

ASPIRA will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on ASPIRA—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

ASPIRA will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

ASPIRA will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

ASPIRA will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- ASPIRA will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. [If ASPIRA provides a description of the evidence: ASPIRA will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.];
- ASPIRA will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- ASPIRA will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

Questioning the Parties and Witnesses:

ASPIRA will provide a process that enables the decision maker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

When ASPIRA chooses not to conduct a live hearing: ASPIRA process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will:

- Allow the investigator or decision maker to ask such questions during individual meetings with a party or witness;
- Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the investigator or decision maker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to the procedures for evaluating and limiting questions discussed

- below; and
- Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.

When ASPIRA chooses to conduct a live hearing: ASPIRA's process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will allow the decision maker to ask such questions, and either:

- Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decision maker, subject to the procedures for evaluating and limiting questions discussed below; or
- Allow each party's advisor to ask any party or witness such questions, subject to the procedures for evaluating and limiting questions discussed below. Such questioning will never be conducted by a party personally.

Procedures for the decision maker to evaluate the questions and limitations on questions:

The decision maker will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decision-maker will give a party an opportunity to clarify or revise a question that the decision-maker determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked.²³

Refusal to respond to questions and inferences based on refusal to respond to questions:

The decision maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decision maker will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

Procedures for a Live Hearing, if offered²⁴:

ASPIRA will conduct the live hearing with the parties physically present in the same geographic location or, at ASPIRA discretion or upon the request of either party, will conduct the live hearing with the parties physically present in separate locations with technology enabling the decision maker and parties to simultaneously see and hear the party or witness while that person is speaking.

ASPIRA will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

Determination Whether Sex Discrimination Occurred:

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, ASPIRA will:

- Use the [preponderance of the evidence or, if applicable,¹² clear and convincing] standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decision maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decision maker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decision maker will not determine that sex discrimination occurred.
- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX, including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
 - Coordinate the provision and implementation of remedies to a complainant and other people ASPIRA identifies as having had equal access to ASPIRA's education program or activity limited or denied by sex discrimination;
 - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within ASPIRA's education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.¹³

Appeal of Determinations, if offered¹⁴:

ASPIRA offers the following process for appeals from a determination whether sex discrimination occurred: An appeal should be requested in writing to the Title IX coordinator within 10 days of the final determination. This appeal process will be, at a minimum, the same as ASPIRA offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.

Informal Resolution, if offered¹⁵:

In lieu of resolving a complaint through ASPIRA's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. ASPIRA does not offer informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

Supportive Measures:

ASPIRA will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to ASPIRA's education program or activity or provide support during ASPIRA's Title IX grievance procedures or during the informal resolution process.¹⁶ For complaints of sex-based harassment, these supportive measures may include ones that protect the safety of parties or the educational environment, are not punitive or disciplinary, do not cause unreasonable burden to a party, and must comply with § 106.44(g)].

Disciplinary Sanctions and Remedies:

Following a determination that sex-based harassment occurred, APSIRA may impose disciplinary sanctions, those actions can be reviewed in the Student Code of Conduct and the ASPIRA Team Member Handbook.

⁶ See § 106.44(f)(1)(v).

⁷ See 34 CFR 99.30; 34 CFR 99.3

⁸ See § 106.44(k).

⁹ See § 106.8(d).

¹⁰ See § 106.44(g).

¹¹ See § 106.44(f).

¹⁴ See § 106.45(i).

¹⁵ See § 106.44(k).

¹⁶ See § 106.44(g).
